

**Appendix II**

**National Telecommunications Cooperative  
Association (NTCA)**

**Written Submission  
To The**

**Federal-State Joint Board  
On Universal Service  
CC Docket 96-45**

**Panel 3 of En Banc Hearing on the  
Portability of High-Cost Universal Service  
and the ETC Designation Process**

**Thursday, July 31, 2003**

### Panel 3: ETC Designation Process

NTCA proposes that the Board recommend that the Commission and the states adopt specific guidelines to determine what constitutes the public interest under 47 USC § 214(e)(2).<sup>1</sup> This paper suggests that applications be examined carefully in the context of seven areas of inquiry discussed below.

1. Is the additional designation required to ensure that consumers living in the rural ILEC service area have access to the nine supported services listed in the definition of universal service (47 C.F.R. §54.101)<sup>2</sup> at rates that are comparable to similar services and rates received by consumers living in urban areas (47 U.S.C. §254(b)(3))?<sup>3</sup>

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<sup>1</sup> Designation of eligible telecommunications carriers - A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may. [Emphasis added] in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest [Emphasis added] (47 U.S.C. § 214(e)(2)).

<sup>2</sup> § 54.101 Supported services for rural, insular and high cost areas.

(a) Services designated for support. The following services or functionalities shall be supported by federal universal service support mechanisms:

(1) Voice grade access to the public switched network. "Voice grade access" is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signalling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. For the purposes of this part, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz;

(2) Local usage. "Local usage" means an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users;

(3) Dual tone multi-frequency signaling or its functional equivalent. "Dual tone multi-frequency" (DTMF) is a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time;

(4) Single-party service or its functional equivalent. "Single-party service" is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission;

(5) Access to emergency services. "Access to emergency services" includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code "911," to call emergency services through a Public Service Access Point (PSAP) operated by the local government. "Enhanced 911" is defined as 911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected, and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party. "Access to emergency services" includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems;

(6) Access to operator services. "Access to operator services" is defined as access to any automatic or live

The threshold public interest question that the FCC and state commissions should ask is whether consumers in the targeted service area have access to the nine supported services at rates comparable to consumers living in urban areas. If consumers already have access to these services at comparable rates, then the Act's mandate of providing consumers with access to universal service has been achieved. The FCC and state commissions should weigh this factor heavily when deciding whether providing universal service support dollars to a second ETC in a rural ILEC study area is in the public interest.

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assistance to a consumer to arrange for billing or completion, or both, of a telephone call;

(7) Access to interexchange service. "Access to interexchange service" is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network;

(8) Access to directory assistance. "Access to directory assistance" is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings; and

(9) Toll limitation for qualifying low-income consumers. Toll limitation for qualifying low-income consumers is described in subpart E of this part.

(b) Requirement to offer all designated services. An eligible telecommunications carrier must offer each of the services set forth in paragraph (a) of this section in order to receive federal universal service support.

(c) Additional time to complete network upgrades. A state commission may grant the petition of a telecommunications carrier that is otherwise eligible to receive universal service support under § 54.201 requesting additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation. If such petition is granted, the otherwise eligible telecommunications carrier will be permitted to receive universal service support for the duration of the period designated by the state commission. State commissions should grant such a request only upon a finding that exceptional circumstances prevent an otherwise eligible telecommunications carrier from providing single-party service, access to enhanced 911 service, or toll limitation. The period should extend only as long as the relevant state commission finds that exceptional circumstances exist and should not extend beyond the time that the state commission deems necessary for that eligible telecommunications carrier to complete network upgrades. An otherwise eligible telecommunications carrier that is incapable of offering one or more of these three specific universal services must demonstrate to the state commission that exceptional circumstances exist with respect to each service for which the carrier desires a grant of additional time to complete network upgrades.

<sup>3</sup> Access in rural and high cost areas - Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas (47 U.S.C. § 254(b)(3)).

Designating an additional ETC in a study area where access to the defined services is already available may bring huge benefits to the petitioning ETC but be unnecessary to achieve the goals of Section 254(b)(3) and not in the public interest. The designation may unnecessarily increase the support burden on all consumers without providing the rural consumers with any additional “universal service” benefits they do not already have. Conversely, in rural ILEC service areas where consumers are currently unserved or underserved, if the requesting ETC can provide unserved or underserved consumers with access to the nine supported services at comparable rates and meet the other requirements contained in section 214(e), granting the ETC designations is arguably in the public interest.

2. Would the carrier requesting ETC designation be able to provide service to the entire rural ILEC service territory as required by 47 U.S.C. §214(e)(1) and 47 U.S.C. §214(e)(5)?<sup>4</sup>

Another important factor that must be considered in the public interest determination is whether the carrier requesting designation is able to provide service to the entire rural ILEC service territory.<sup>5</sup> The FCC and state commissions have largely given this statutory requirement cursory review. Regulators have more or less taken the word of the petitioning carriers that they will provide consumers with access to universal service throughout the entire rural ILEC study area at some uncertain date in the future. Unfortunately, the FCC and most state commissions have not set deadlines for these carriers to meet this mandatory requirement. The FCC and state commissions should

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<sup>4</sup> Service area defined - The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this title, establish a different definition of service area for such company (47 U.S.C. § 214(e)(5)).

<sup>5</sup> 47 U.S.C. § 214(e)(1)(a) and 47 U.S.C. § 214(e)(5).

require that a potential ETC be able to demonstrate that it can provide access to universal service to the “entire” study area either presently or by a date certain.

Providing access to universal service throughout the entire rural telephone company service area is a mandatory requirement and one that should not be compromised.<sup>6</sup> By allowing ETCs to provide universal service to only portions of a rural service area, the FCC and state commissions are creating perfect opportunity for cream-skimming. They are also facilitating the creation of a world of haves and have-nots, where some consumers will have access to the nine supported services while other consumers will not. This is precisely the type of circumstance that Congress sought to prevent when it established the mandatory requirement that all ETCs provide access to supported services to all consumers throughout the rural ILEC service area. The entire rural service area requirement is intended to discourage carriers from picking and choosing the more lucrative customers and easy to serve portions of rural areas. The FCC and state commissions therefore should hold all ETCs accountable to this requirement and should give it substantial weight when determining whether the public interest would be served by granting a pending ETC designation petition.

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<sup>6</sup> *Id.*

3. Do the potential benefits to the rural service area, if any, of granting the ETC designation outweigh the ultimate burdens on consumers through the added growth in the federal and/or state universal service funds (47 U.S.C. §254(b)(5))?<sup>7</sup>

NTCA supports Commissioner Adelstein's call for regulators to conduct a balancing test to arrive at a public interest finding:

At the very least, we must ask whether granting ETC status to a competitor will bring benefits to a community that it does not already have and what effect it will have on the overall size of the fund, and thus on consumers bills. So, a threshold question is, does the benefit to consumers outweigh the ultimate burden on the consumer?<sup>8</sup>

The benefits of providing universal service access to consumers should be weighed against the burdens of the added growth in the federal and/or state universal service funds. In most cases, the benefits provided by a potential wireless ETC are duplicative of access to telecommunications services that rural consumers are already receiving. Without debating the differences in quality and reliability of service between wireline and wireless carriers, the additional services provided by additional ETCs are often touted as justification for designation. It is not clear what these are. Mobility may be a different service that wireless carriers offer but it is not a supported service listed in the definition of universal service. The toll service included in bundled wireless services is also not a supported service. The Joint Board in its most recent recommendation concerning possible changes to the definition of universal service, recommended to the FCC that the definition should remain the same and did not recommend adding mobility

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<sup>7</sup> Specific and predictable support mechanisms. There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service (47 USC § 254(b)(5)).

<sup>8</sup>Remarks of Commissioner Jonathan S. Adelstein, Before the National Association of Regulatory Utility Commissioners (Feb. 25, 2003).

or toll service to the list of supported service.<sup>9</sup> The benefits of providing mobility and toll services to consumers who already have access to the supported services are not valid considerations in a public interest determination. Even if mobility was a federally supported service, the balancing test should be applied before designating an ETC to make that service available to rural and low-income consumers throughout the United States.

Under the existing rules, every new ETC designation imposes added costs on the fund and ultimately on the public. A public interest test should therefore consider whether these calculable added costs are justifiable when weighed against the benefits that a grant provides. The balancing test must also consider the policies and universal service benefits contemplated in Section 254(b) and (c). Universal service policy should be made on a comprehensive basis instead of the call by case approach, which is developing in the absence of guidelines for designations.

The mere existence of a competitor in a rural ILEC study area cannot be the sole measure of the public interest. The benefits and public burdens of competition must also be weighed. In the absence of benefits contemplated by the statute, designations that add new cost for duplicative services are not in the public interest. As Commissioner Adelstein has correctly identified, the FCC and state commissions have not been “careful enough in ensuring that end users are not ultimately paying extra, not for improvements in service but for forced or artificial competition.”<sup>10</sup>

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<sup>9</sup> *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 02J-1, Recommended Decision (released July 10, 2002). The Commission affirmed this recommendation in *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC –3-170 (rel. July 14, 2003)

<sup>10</sup> Remarks of Commissioner Jonathan S. Adelstein, Before the National Association of Regulatory Utility Commissioners (Feb. 25, 2003).

4. Is the carrier requesting designation willing to demonstrate its costs to provide universal service to consumers living in the rural ILEC service territory so that the FCC or state commission can ensure that support received would not be excessive and would be used for the purposes intended (47 U.S.C. §254(e))?<sup>11</sup>

The carrier requesting the ETC designation should also be asked whether it is willing to demonstrate its costs to provide universal service to consumers living in the rural ILEC service territory so that the FCC or state commission can ensure that support received would not be excessive and would be used for the purposes intended. If the requesting carrier is willing to make a cost demonstration, the FCC or state commission can then review this information and determine whether potential universal service support dollars distributed to the requesting carrier would comply with section 254(e). Without cost information for the requesting carrier, the FCC and state commissions cannot ensure that support levels and support use are in compliance with the Act.

Providing wireless ETCs support on the basis of rural ILEC costs enables competitors to seek ETC designation where the support will give them a competitive advantage and the greatest amount of support dollars, irrespective of the ETC's costs of providing universal service in the rural ILEC service area. This type of regulatory arbitrage may be great for the bottom line but it provides no assurance that support is being used to deliver the supported services to consumers in high cost areas. The observation is supported by a report of the Wall Street investment company Solomon

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<sup>11</sup> Universal service support - After the date on which Commission regulations implementing this section take effect, only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section (47 U.S.C. § 254(e)).



Smith Barney, which concludes that Western Wireless's "USF subsidy represents an incremental revenue source" where the "incremental revenue is almost all margin."<sup>12</sup>

5. Would the ETC designation result in excessive support to the requesting carrier based on the amount of support distributed under the identical support rule (47 C.F.R. § 54.307(a)(1) compared to the carrier's costs of providing universal service to the rural ILEC service area (47 U.S.C §254(e))?

If the carrier requesting ETC designation provides costs information and the FCC or state commission can determine that support would be excessive under the identical support rule,<sup>13</sup> the level of support distributed to the potential ETC should be reduced in order to comply with the sufficiency requirement in section 254(e). Without assurance that support is in compliance with section 254(e), it is highly questionable whether it would be in the public interest to grant the petition for ETC designation – especially if consumers in the designated service area already have access to the nine supported services from other providers at affordable and comparable rates.

6. If the carrier seeking ETC designation is already offering rural consumers universal service at a rate at, below, or slightly above the comparable rate for supported services, why is the requesting carrier seeking universal service support dollars when its rates are already comparable without support (47 U.S.C §254(b)(3))?

If the carrier seeking ETC designation is already offering consumers living in the rural ILEC study area service at a rate at, below, or slightly above the comparable rate for supported services, the FCC and state commissions should ask why the requesting carrier seeks universal service support dollars when its rates are already comparable without support. Wireless carriers seeking ETC designation in rural areas argue that they need

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<sup>12</sup> *Western Wireless (WWCA): USF Provides Upside to Our EBITDA*, Salomon Smith Barney (Jan. 9, 2003), p. 2.

<sup>13</sup> 47 C.F.R. § 54.307(a)(1) (competitive ETCs get the same per line support as the rural ILEC, based on the rural ILEC's costs).

the additional universal service dollars to build-out their networks to provide service to the “entire” service area and therefore the support is justified. If this is the case, the FCC and state commission should request that the carrier provide its build-out plan with cost estimates. If the carrier does not provide its plan with cost estimates, the FCC and state commissions should factor this lack of information into the public interest determination.

The FCC and state commissions should also determine whether consumers in the targeted rural ILEC service area already have access to services provided by multiple service providers. Most rural ILEC study areas are already served by an average of three or more three wireless carriers.<sup>14</sup> Many of these same wireless providers are not ETCs but are providing rural consumers with service at rates comparable to services and rates provided to consumers in urban areas.<sup>15</sup> These carriers have not obtained wireless licenses on the condition that they obtain ETC status or built their business models on the condition of support. Regulators should ask why support is needed for yet another wireless carrier if consumers are already obtaining wireless services without it.

NTCA disagrees with the notion that support should be used to foster competition. Nonetheless, if competition is the goal, regulators should ask whether support is in fact necessary to bring competition. In addition to competing against multiple wireless providers, many rural ILECs are already competing against landline competitive local exchange carriers (CLECs), municipal telecommunications providers, cable telephony providers, voice over Internet service providers (VOIPs), and satellite providers. Designating an additional ETC in a study area where consumers already have access to universal service from multiple providers offering competing services at

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<sup>14</sup> *Seventh Annual CMRS Competition Report*, 17 FCC Rcd 13,023.

<sup>15</sup> *Seventh Annual CMRS Competition Report*, 17 FCC Rcd 13,025, citing the Econ One Study.

comparable rates adds no new benefits and may not be in the public interest when the costs of supporting additional carriers is calculated in the mix. The granting of the designation under these circumstances would unnecessarily increase the universal service payments burden on all consumers without providing the consumers targeted in the rural ILEC study area with any additional universal service benefits.

7. Is the carrier requesting ETC designation willing to adhere to quality of service or other state-specific requirements?

The final factor that the FCC and state commissions should consider is whether the carrier requesting ETC designation is willing to adhere to quality of service or, other additional requirements imposed by the states. Quality of service has been largely ignored in the designation process, despite Section 254(b)(1) which states “quality services should be available at just, reasonable and affordable rates.”

Carriers that seek designation do so voluntarily and should be held accountable for the service they provide. The public should be able to rely on these carriers for service that is consistent and reliable. There should be no excuses allowed for gaps in service or dropped calls. The purpose of support is to give high cost rural consumers comparable services, not degraded or diminished service. The United States Court of Appeals for the 5<sup>th</sup> Circuit has determined that the FCC and state commissions may impose “additional eligibility requirements on carriers otherwise eligible to receive federal universal service support.”<sup>16</sup> The FCC and state commissions should exercise their authority and require potential ETCs to demonstrate they are capable of maintaining certain quality of service levels to the same extent that incumbents must do so.

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<sup>16</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 412 (U.S.C.A. 5<sup>th</sup> Cir. 1999).

The competitive neutrality principle supports the idea that all ETCs should be required to provide “quality services.” States are heavily involved in ensuring that consumers receive adequate and reliable service. They have a legitimate interest in the maintenance of high quality services at affordable rates. Carriers seeking designation do so because they seek support to achieve the goals of universal service. Fairness dictates that all ETCs assume the obligation to achieve universal service goals and that all adhere equally to quality of service or other state-specific requirements that incumbents must adhere to when they operate as ETCs.